

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 998**

Introduced by Transportation and Telecommunications Committee:  
Bromm, 23, Chairperson; Baker, 44; Brown, 6;  
Byars, 30; Jones, 43; Dw. Pedersen, 39; Robak, 22

Read first time January 10, 2002

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor carriers; to amend sections 75-363 and  
2 75-364, Revised Statutes Supplement, 2001; to change  
3 provisions relating to motor carrier safety; to adopt  
4 certain portions of the federal Motor Carrier Safety  
5 Regulations and the federal Hazardous Material  
6 Regulations; to repeal the original sections; and to  
7 declare an emergency.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 75-363, Revised Statutes Supplement,  
2   2001, is amended to read:

3           75-363. (1) The parts of the federal Motor Carrier  
4   Safety Regulations, 49 C.F.R., as modified in this section and any  
5   other parts referred to by such parts, in existence and effective  
6   as of January 1, ~~2001~~ 2002, are adopted as Nebraska law. Except as  
7   otherwise provided in this section, the regulations shall be  
8   applicable to all carriers, drivers, and vehicles to which the  
9   federal regulations apply, to all vehicles of intrastate motor  
10   carriers with a gross vehicle weight rating, gross combination  
11   weight rating, gross vehicle weight, or gross combination weight  
12   over ten thousand pounds, to all vehicles of intrastate motor  
13   carriers designed or used to transport more than eight passengers,  
14   including the driver, for compensation, or designed or used to  
15   transport more than fifteen passengers, including the driver, and  
16   not used to transport passengers for compensation, to all  
17   intrastate motor carriers in the operation of vehicles with a gross  
18   vehicle weight rating, gross combination weight rating, gross  
19   vehicle weight, or gross combination weight over ten thousand  
20   pounds, to all intrastate motor carriers in the operation of  
21   vehicles designed or used to transport more than eight passengers,  
22   including the driver, for compensation, or designed or used to  
23   transport more than fifteen passengers, including the driver, and  
24   not used to transport passengers for compensation, and to all  
25   drivers of such vehicles if the drivers are operating a commercial  
26   motor vehicle as defined in section 60-465 which requires a  
27   commercial driver's license. The Legislature hereby adopts, as  
28   modified in this section:

1 (a) Part 382 -- Controlled Substances And Alcohol Use And  
2 Testing;

3 (b) Part 385 -- Safety Fitness Procedures;

4 (c) Part 390 -- Federal Motor Carrier Safety Regulations;  
5 + General;

6 (d) Part 391 -- Qualifications Of Drivers;

7 (e) Part 392 -- Driving Of Commercial Motor Vehicles;

8 (f) Part 393 -- Parts And Accessories Necessary For Safe  
9 ~~Operations~~ Operation;

10 (g) Part 395 -- Hours Of Service Of Drivers;

11 (h) Part 396 -- Inspection, Repair, And Maintenance;

12 (i) Part 397 -- Transportation Of Hazardous Materials;  
13 Driving And Parking Rules; and

14 (j) Part 398 -- Transportation Of Migrant Workers.

15 (2) The provisions of subpart E, Physical Qualifications  
16 And Examinations, of 49 C.F.R. part 391, Qualifications Of Drivers,  
17 shall not apply to any driver subject to this section who: (a)  
18 Operates a commercial motor vehicle exclusively in intrastate  
19 commerce; and (b) holds, or has held, a commercial driver's license  
20 issued by this state prior to July 30, 1996.

21 (3) The regulations adopted in subsection (1) of this  
22 section shall not apply to farm trucks registered pursuant to  
23 section 60-330 with a gross weight of sixteen tons or less or to  
24 fertilizer and agricultural chemical application and distribution  
25 equipment transported in units with a capacity of three thousand  
26 five hundred gallons or less if the equipment is not required to be  
27 placarded pursuant to section 75-364. The following parts and  
28 sections of the federal Motor Carrier Safety Regulations shall not

1 apply to drivers of farm trucks registered pursuant to section  
2 60-330 and operated solely in intrastate commerce:

3 (a) All of part 391;

4 (b) Section 395.8 of part 395; and

5 (c) Section 396.11 of part 396.

6 (4) For purposes of this section, intrastate motor  
7 carriers shall not include any motor carrier or driver excepted  
8 from the federal Motor Carrier Safety Regulations by section  
9 390.3(f) of part 390 or any nonprofit entity, operating solely in  
10 intrastate commerce, organized for the purpose of furnishing  
11 electric service.

12 (5) Part 395 -- Hours Of Service Of Drivers shall apply  
13 to motor carriers and drivers who engage in intrastate commerce as  
14 defined in section 75-302, except that no motor carrier who engages  
15 in intrastate commerce shall permit or require any driver used by  
16 it to drive nor shall any driver drive:

17 (a) More than twelve hours following eight consecutive  
18 hours off duty; or

19 (b) For any period after having been on duty sixteen  
20 hours following eight consecutive hours off duty.

21 No motor carrier who engages in intrastate commerce shall  
22 permit or require a driver of a commercial motor vehicle,  
23 regardless of the number of motor carriers using the driver's  
24 services, to drive, nor shall any driver of a commercial motor  
25 vehicle drive, for any period after:

26 (i) Having been on duty seventy hours in any seven  
27 consecutive days if the employing motor carrier does not operate  
28 every day of the week; or

1           (ii) Having been on duty eighty hours in any period of  
2 eight consecutive days if the employing motor carrier operates  
3 motor vehicles every day of the week.

4           (6) Part 395 -- Hours Of Service Of Drivers, as adopted  
5 in subsections (1) and (5) of this section relating to maximum  
6 driving and on-duty time for drivers, shall not apply to drivers  
7 transporting agricultural commodities or farm supplies for  
8 agricultural purposes when the transportation of such commodities  
9 or supplies occurs within a one-hundred-air-mile radius of the  
10 source of the commodities or the distribution point for the  
11 supplies when such transportation occurs during the period  
12 beginning on February 15 up to and including December 15 of each  
13 calendar year.

14           (7) Section 390.21 of part 390 -- Federal Motor Carrier  
15 Safety Regulations: General, 49 C.F.R. 390.21 -- Marking ~~of~~  
16 ~~Commercial Motor Vehicles~~ of commercial motor vehicles, shall not  
17 apply to farm trucks and farm truck-tractors registered pursuant to  
18 section 60-330 and operated solely in intrastate commerce.

19           Sec. 2. Section 75-364, Revised Statutes Supplement,  
20 2001, is amended to read:

21           75-364. (1) The parts of the federal Hazardous Material  
22 Regulations, 49 C.F.R., listed below or any other parts referred to  
23 by such parts, in existence and effective as of January 1, ~~2001~~  
24 2002, are adopted as part of Nebraska law and, except as provided  
25 in subsections (2) and (3) of this section, shall be applicable to  
26 all private, common, and contract motor vehicle carriers, drivers  
27 of such carriers, and vehicles of such carriers whether engaged in  
28 interstate or intrastate commerce:

1           (a) Part 171 -- General Information, Regulations, And  
2 Definitions;

3           (b) Part 172 -- Hazardous Materials Table, Special  
4 Provisions, Hazardous Materials Communications, Emergency Response  
5 Information, and Training Requirements;

6           (c) Part 173 -- Shippers--General Requirements For  
7 Shipments And Packagings;

8           (d) Part 177 -- Carriage By Public Highway;

9           (e) Part 178 -- Specifications For Packagings; and

10          (f) Part 180 -- Continuing Qualification And Maintenance  
11 Of Packagings.

12          (2) Agricultural operations exceptions:

13           (a) The transportation of an agricultural product other  
14 than a Class 2 material (Compressed Gases), over roads, other than  
15 the National System of Interstate and Defense Highways, between  
16 fields of the same farm, is excepted from subsection (1) of this  
17 section when:

18           (i) The agricultural product is transported by a farmer  
19 who is an intrastate private motor carrier; and

20           (ii) The movement of the agricultural product conforms to  
21 all other laws in effect on or before July 1, 1998, and 49 C.F.R.  
22 173.24, 173.24a, and 173.24b;

23           (b) The transportation of an agricultural product to or  
24 from a farm, within one hundred fifty miles of the farm, is  
25 excepted from the requirements in 49 C.F.R. part 172, subparts G  
26 (emergency response information) and H ~~(training requirements)~~  
27 (training) when:

28           (i) The agricultural product is transported by a farmer

1 who is an intrastate private motor carrier;

2 (ii) The total amount of agricultural product being  
3 transported on a single vehicle does not exceed:

4 (A) Sixteen thousand ninety-four pounds of ammonium  
5 nitrate fertilizer properly classed as Division 5.1, PGIII, in a  
6 bulk packaging; or

7 (B) Five hundred two gallons for liquids or gases, or  
8 five thousand seventy pounds for solids, of any other agricultural  
9 product;

10 (iii) The packaging conforms to the requirements of state  
11 law and is specifically authorized for transportation of the  
12 agricultural product by state law and such state law has been in  
13 effect on or before July 1, 1998; and

14 (iv) (A) Each person having any responsibility for  
15 transporting the agricultural product or preparing the agricultural  
16 product for shipment has been instructed in the applicable  
17 requirements of 49 C.F.R. adopted in this section; and

18 (B) Instruction by the Department of Agriculture required  
19 pursuant to the Pesticide Act shall be sufficient for instruction  
20 under subdivision (2) (b) (iv) (A) of this section, if it has been  
21 approved for that purpose by the carrier enforcement division of  
22 the Nebraska State Patrol; and

23 (c) Formulated liquid agricultural products in  
24 specification packagings of fifty-eight-gallon capacity or less,  
25 with closures manifolded to a closed mixing system and equipped  
26 with positive dry disconnect devices, may be transported by a  
27 private motor carrier between a final distribution point and an  
28 ultimate point of application or for loading aboard an airplane for

1 aerial application.

2 (3) Exceptions for nonspecification packagings used in  
3 intrastate transportation:

4 (a) Nonspecification bulk packagings: Notwithstanding  
5 requirements for specification packagings in 49 C.F.R. part 173,  
6 subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous  
7 material regulations, a nonspecification bulk packaging may be used  
8 for transportation of a hazardous material by an intrastate motor  
9 carrier until July 1, 2000, in accordance with subdivision (d) of  
10 this subsection;

11 (b) Nonspecification cargo tanks for petroleum products:  
12 Notwithstanding requirements for specification packagings in 49  
13 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a  
14 nonspecification metal tank permanently secured to a transport  
15 vehicle and protected against leakage or damage in the event of a  
16 turnover, having a capacity of less than three thousand five  
17 hundred gallons, may be used by an intrastate motor carrier for  
18 transportation of a flammable liquid petroleum product in  
19 accordance with subdivision (d) of this subsection;

20 (c) Permanently secured nonbulk tanks for petroleum  
21 products: Notwithstanding requirements for specification  
22 packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts  
23 178 and 180, a nonspecification metal tank permanently secured to a  
24 transport vehicle and protected against leakage or damage in the  
25 event of a turnover, having a capacity of less than one hundred  
26 nineteen gallons, may be used by an intrastate motor carrier for  
27 transportation of a flammable liquid petroleum product in  
28 accordance with subdivision (d) of this subsection; and



1 (d) Additional requirements: A packaging used pursuant to  
2 subdivision (a), (b), or (c) of this subsection must:

3 (i) Be operated by an intrastate motor carrier and in use  
4 as a packaging for hazardous material before July 1, 1998;

5 (ii) Be operated in conformance with the requirements of  
6 the State of Nebraska;

7 (iii) Be specifically authorized by state law in effect  
8 before July 1, 1998, for use as a packaging for the hazardous  
9 material being transported and by 49 C.F.R. 173.24, 173.24a, and  
10 173.24b;

11 (iv) Be offered for transportation and transported in  
12 conformance with all other applicable requirements of the hazardous  
13 material regulations;

14 (v) Not be used to transport a flammable cryogenic  
15 liquid, hazardous substance, hazardous waste, or marine pollutant;  
16 and

17 (vi) On and after July 1, 2000, for a tank authorized  
18 under subdivision (b) or (c) of this subsection, conform to all  
19 requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g)  
20 of the hazardous material regulations, in the same manner as  
21 required for a United States Department of Transportation  
22 specification MC306 cargo tank motor vehicle.

23 (4) For purposes of this section:

24 (a) Agricultural product means a hazardous material,  
25 other than a hazardous waste, whose end use directly supports the  
26 production of an agricultural commodity, including, but not limited  
27 to, a fertilizer, pesticide, soil amendment, or fuel. An  
28 agricultural product is limited to a material in Class 3 (Flammable

1 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),  
2 Division 2.1 (Flammable Gas), Class 2.2 (Nonflammable Gas), Class  
3 5.1 (Oxidizers), or Class 6.1 (Poisons), or an ORM-D material  
4 (Consumer Commodity);

5 (b) Bulk package means a packaging, including a transport  
6 vehicle or freight container, in which hazardous materials are  
7 loaded with no other intermediate form of containment and which  
8 has:

9 (i) A maximum capacity greater than one hundred nineteen  
10 gallons as a receptacle for a liquid;

11 (ii) A maximum net mass greater than eight hundred  
12 eighty-two pounds and a maximum capacity greater than one hundred  
13 nineteen gallons as a receptacle for a solid; or

14 (iii) A water capacity greater than one thousand pounds  
15 as a receptacle for a gas as defined in 49 C.F.R. 173.315;

16 (c) Farmer means a person engaged in the production or  
17 raising of crops, poultry, or livestock; and

18 (d) Private motor carrier means a person or persons  
19 engaged in the transportation of persons or product while in  
20 commerce, but not for hire.

21 Sec. 3. Original sections 75-363 and 75-364, Revised  
22 Statutes Supplement, 2001, are repealed.

23 Sec. 4. Since an emergency exists, this act takes effect  
24 when passed and approved according to law.